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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/701,788	11/04/2003	Scot N. Andersen	15824.1.1	7430

22913 7590 01/19/2005

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EXAMINER

WILSON, JOHN J

ART UNIT PAPER NUMBER

3732

DATE MAILED: 01/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SN

<b>Office Action Summary</b>	<b>Application No.</b> 10/701,788	<b>Applicant(s)</b> ANDERSEN, SCOT N.	
	<b>Examiner</b> John J. Wilson	<b>Art Unit</b> 3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 December 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-23 and 27-33 is/are allowed.
- 6) ☒ Claim(s) 24-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/31/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berghash (6280196) in view of Burgio (6126443). Berghash shows a pre-shaped non-custom tray having two walls 28, 29 that lack structures matching a unique dentition, the walls have a thickness of .03-.08 inches (.76-2 mm) and at some portions the wall thickness is .01-.02 inches (.25-.5 mm), column 3, lines 6-11. The thinness allows the walls to flex to conform to the teeth, column 2, lines 34-60. Berghash does not show using indentations. Burgio teaches using indentations 32. It would be obvious to one of ordinary skill in the art to modify Berghash to include indentations as shown by Burgio in order to better hold the treatment agents. Berghash does not show use of the materials EVA and polypropylene. Burgio teaches that it is known to use EVA and polypropylene for trays, column 6, lines 34-38. It would be obvious to one of ordinary skill in the art to modify Berghash to include the use of the materials as shown by Burgio in order to make use of art known materials for forming trays. Berghash teaches a range of thickness for all of the tray that includes values within the range claimed, and therefore, meets the size limitation.

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Further, Berghash teaches a range of thickness for portions of the walls that meets the claim language. As such, the claimed properties are inherent.

### ***Specification***

The specification is objected to because it does not have language corresponding to the language now being used in the claims.

### ***Allowable Subject Matter***

Claims 1-23 and 27-33 are allowed.

The following is an examiner's statement of reasons for allowance: It would not be obvious to modify the newly applied reference to Berghash to include a viscous sticky treatment composition that causes the tray to at least partially conform to the teeth because the Berghash teaches that the purpose of the invention is to prevent the treatment composition from flowing out, and therefore, does not properly suggest the combination with a viscous sticky composition for the purpose claimed.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

***Response to Arguments***

Applicant's arguments filed December 7, 2004 have been fully considered but they are not persuasive. Applicant's remarks are held to be moot in view of the newly applied rejection above and in view of the indication of allowable subject matter.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

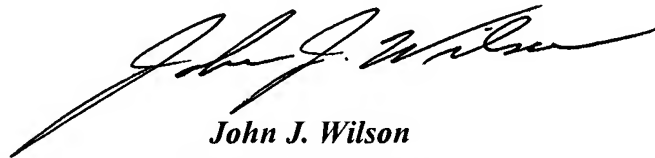
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John J. Wilson whose telephone number is 571-272-4722). The examiner can normally be reached on Monday through Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver, can be reached at 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**John J. Wilson**  
**Primary Examiner**  
**Art Unit 3732**

jjw  
January 14, 2005